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Supreme Court of the United States

OCTOBER TERM, 1922.

No. 643.

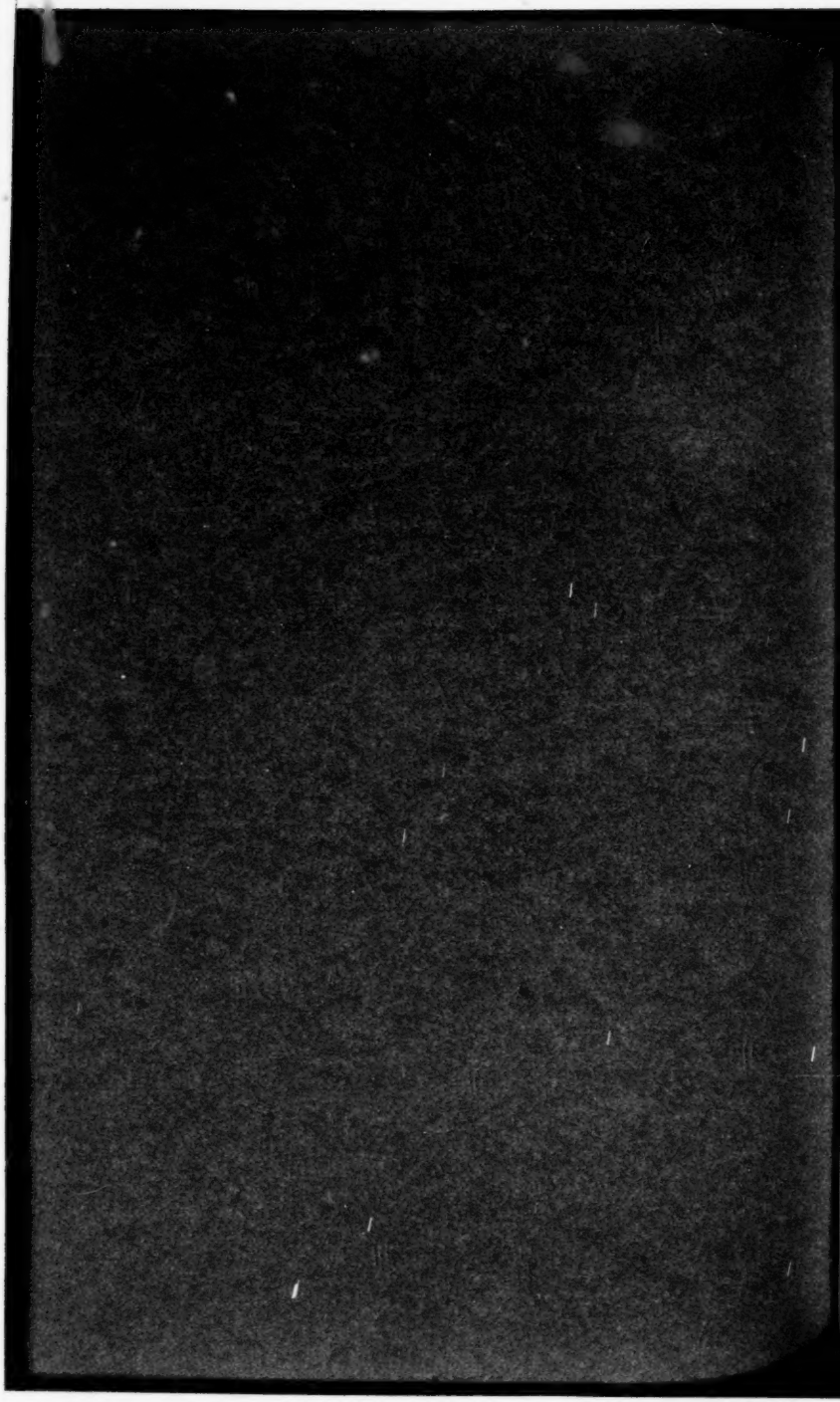
CHARLES YOUNG,
Appellant,

vs.

ANTHONY MASCI,
Appellee.

BRIEF FOR APPELLEE.

SAMUEL KAUFMAN,
Counsel for Appellee.



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BRIEF FOR APPELLEE.

The opinion of the court below is reported *sub nomine Masci* v. *Young* in 109 N. J. L. 453, 10 N. J. Adv. Rep. #47, 162 Atl. 623.

Nature of the Case.

The facts are substantially as stated by appellant in his brief except as to the circumstances and nature of the bailment of his car. The important testimony of Irwin H. Simon relating to an admission made by appellant has been omitted:

> "Q. Where did he say the car was being driven? A. Mr. Young told me that he was told by Mr. Balbino that the car was going to be driven by Mr. Balbino with some of his relations to Rye Beach, New York." (R. 75)

That there was this testimony is recognized by Donges, J., in the opinion below:

> "There was some testimony that the appellant knew that Balbino intended to operate the car in the State of New York. The appellant denied such knowledge." (R. 92)

Appellant has further omitted his own testimony that Balbino came to him on a Saturday afternoon and asked to borrow the car for Sunday (the day on which this accident occurred); that Balbino told him he would bring it back Monday morning; that he (Young) had no objection to that (R. 44).

There was no testimony that "The thought that Balbino might possibly drive the car out of the State of New Jersey never occurred to him (Young)." (Brief for Appellant 2). Nor did the court instruct the jury "That the New York Statute operated to make Young liable for the bailee's negligence, * * * although he believed the bailee would not go into New York." (Brief for Appellant 12). And since it is undisputed that Young gave Balbino the unrestricted use of his car for a day, it is difficult to understand how "under the charge of the trial court Young was liable although Balbino had borrowed the car merely to drive it around the corner, under an express agreement with Young that he would not drive it into the State of New York". (Brief for Appellant 17).

ARGUMENT.

The application of the New York Statute to the appellant in this case does not violate any of the provisions of the United States Constitution.

It is well settled that a state may regulate the use of motor vehicles on its highways, both by residents and non-residents. *Hendrick* v. *Maryland*, 235 U. S. 610, 35 S. Ct. 140, 59 L. Ed. 385; *Kane* v. *New Jersey*, 242 U. S. 160, 37 S. Ct. 30, 61 L. Ed. 222; *Hess* v. *Pawloski*, 274 U. S. 352, 47 S. Ct. 632, 71 L. Ed. 1091.

Counsel for appellant apparently concedes that the statute in question is a reasonable exercise of the police

power of the State of New York. (Brief for Appellant 12). Whether it is a reasonable exercise of the police power has not, so far as we have been able to determine, been decided by this court. Similar statutes have been in effect since 1915, and in 1917, the Michigan courts in the case of *Stapleton* v. *Independent Brewing Co.,* 198 Mich. 170, 164 N. W. 520, L. R. A. 1918 A. 916, held that a statute substantially the same as the one here in question was valid. The New York statute has been held valid in *Feitelberg* v. *Matuson,* 124 N. Y. Misc. 595, 208 N. Y. Supp. 786; *Brooks* v. *McNutt Auto Delivery,* 126 Misc. 730, 214 N. Y. Supp. 562, and *Downing* v. *New York,* 219 App. Div. 444, 220 N. Y. Supp. 76. Similar statutes have also been upheld in the states of Rhode Island, Connecticut and California. See 7-8 Huddy Cyc. of Auto. L. (9th ed.), secs. 141 et seq. Blashfield Cyc. of Auto. L. 1318, sec. 3, and in *Van Oster* v. *Kansas,* 272 U. S. 465, 47 S. Ct. 133, 71 L. Ed. 354. Mr. Justice Stone, speaking for this court, said:

> "They have their counterpart in legislation imposing liability on owners of vehicles for the negligent operation by those entrusted with their use regardless of a master-servant relation. Laws of New York, 1924, Chap. 534; Michigan Publ. Acts, 1915; Act No. 302 § 29 (constitutionality upheld, Stapleton *v.* Independent Brewing Co., 198 Mich. 170, L. R. A. 1918A, 916, 164 N. W. 520). They suggest that certain uses of property may be regarded so undesirable that the owner surrenders his control at his peril. The law thus builds a secondary defense against a forbidden use and precludes evasions by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the alleged innocent owner."

We contend that appellant has consented to the operation of this statute in that (1) He knew at the time when he lent the car that Balbino intended to go to New York, (2) He permitted Balbino to use his car for a day.

(1) The court charged the jury

> "All that it is necessary for you to find is that the operator, Michael Balbino was at the time of the accident operating this automobile with the defendant's permission, either express or implied * * * If you find that the operator, Balbino, was driving this automobile at the time of the accident with the permission of the defendant, either express or implied, you must then determine the question of negligence * * *." (R. 80)

Bearing in mind that it is undisputed that Young lent Balbino his car to use on Sunday, the day on which this accident occurred, the only meaning of the portion of the charge just quoted and the one that the jury must have understood is that in order to find for the plaintiff (Appellee) they must find that Young knew Balbino intended to take the car to New York and the verdict being for the appellee, the jury must have so found. If this was not the meaning of the court's charge and the court did fail to submit the issue of Young's knowledge to the jury, the failure so to do was not objected to by appellant; nor did he submit any request to charge on this issue, thereby under the law of New Jersey, waiving his right to have the said issue submitted to the jury. *Coll* v. *Lehigh Valley Ry. Co.*, 3 N. J. Misc. 869, 130 A. 225 affd. 102 N. J. L. 713, 132 Atl. 922.

Further, the failure of the court to submit this issue to the jury did not deprive appellant of any right secured to him by the Constitution of the United States (*Hawkins* v. *Bleakly*, 243 U. S. 210, 37 S. Ct. 255, 61 L. Ed. 678). This court has held that it will review findings of fact only when it discovers that there is no legal evidence to support the findings (*Gleason* v. *White*, 199 U. S. 54, 25 S. Ct. 782, 50 L. Ed. 87). The proof by the witness Simon of the admission of the appellant was sufficient to support the finding that Young knew at the time he lent the car that Balbino intended to take it to New York.

(2) Assuming that Young did not know at the time he lent his car that the bailee intended to take the car to New York, nevertheless he consented to the operation of the laws of New York because having lent his car for a day he was bound to know that the one to whom he lent it might go outside the state of New Jersey, and he took his risk of what the law of those states to which his bailee would take his car might be.

In *Kernan* v. *Webb*, 50 R. I. 395, 148 A. 186, one Webb while in Roxbury, Mass., was in the habit of consenting that a Miss Young have the use of his car within the limit of fifty miles from Boston. Miss Young took the car into Rhode Island and while driving in the Town of Warwick in the said state, more than fifty miles from Roxbury, was involved in an accident. In Rhode Island there is a statute which provides in substance that whenever a motor vehicle is used or operated upon any public highway of that state with the consent, express or implied, of the owner, the operator in case of accident shall be deemed to be the agent of the owner. The defendant contended that the Rhode Island statute could not legally be applicable where the consent to the use of the car was given in a foreign state. The Supreme Court of Rhode Island in affirming a judgment for plaintiff, per Stearns, C. J., said:

> "The foundation of this statutory liability of the owner is the permission given to another to use an instrumentality which, if improperly used, is a danger and a menace to the public. The owner can avoid this liability by refusing to permit the use of his automobile by another. If he does permit such use, he can not avoid the consequences of the operator's negligence and escape liability therefor by secret restrictions of the right to use the motor vehicle. The statute has no extraterritorial effect. It does not come into operation until an accident happens on a public highway in this state * * * For the defense it is argued * * * that the defendant, whom plaintiff seeks to hold liable for the wrongful act of

> some other person, was not the principal under the law of principal and agent in Massachusetts, and consequently such relationship can not be created by the mere crossing by the automobile of the state line * * * The inquiry is not one of agency in another state, but whether the consent to use given in one state is a continuing consent for the use in this state * * * No discrimination is made by the statute between citizens of this state and those of other states, nor is the statute, in our judgment, unreasonable."

There are two reported decisions of this court in matters dissimilar to the case now before the court but which enunciate principles applicable here.

In the case of *Thomas* v. *Mathiessen*, 232 U. S. 221, 34 S. Ct. 312, 58 L. Ed. 577, defendant, a resident of New York, signed a subscription agreement reciting the intention of the subscribers to form a corporation in Arizona for the purpose of building and operating a hotel in California. The defendant became a stockholder of the corporation subsequently formed in Arizona in accordance with the subscribers' intention. By the law of Arizona, stockholders were not individually liable for the debts of the corporation and the subscription agreement and charter so provided. In California, stockholders were personally liable for the debts of the corporation in proportion to their holdings. The corporation built a hotel in California and later became insolvent. The plaintiff brought this action to recover of the defendant his proportionate share of a debt contracted by the corporation in California. This court held that the defendant was liable therefor.

Mr. Justice Holmes, speaking for the court in that case, said:

> "The building and carrying on of the California hotel was the main object for which the parties came together. When the defendant authorized that, he could not avoid the consequences by saying that he did not foresee or intend, or that he forbade them. He knew that California had laws and he took the

> risk of what they might be when, as we must hold, he gave his assent to doing business there." (P. 234 of 232 U. S., p. 584 of 58 L. Ed.)

Pinney v. *Nelson*, 183 U. S. 144, 22 S. Ct. 52, 46 L. Ed. 125, was a case in which the facts were substantially similar to *Thomas* v. *Mathiessen*, except that the defendants were residents of the State of California, who subscribed to stock in a corporation organized in Colorado. In that case this court also held that the defendant was liable for his proportionate share of the debt. Mr. Justice Brewer who delivered the opinion of the court said:

> "All that we here hold is that when a corporation is formed in one state and by the express terms of its charter it is created for doing business in another state, and business is done in that state, it must be assumed that the charter contract was made with reference to its laws; and the liabilities which those laws impose will attend the transaction of such business." (At 151 of 183 U. S. and 128 of 46 L. Ed.)

It appears, therefore, that one who authorizes the performance in another state of an act which that state may regulate by the reasonable exercise of its police power, whether or not at the time of the authorization he knew that the laws of the said state regulated the act, thereby consents to the regulation in force in that state and is subject thereto. So here Young authorized Balbino to operate his car in New York where the operation of the car was reasonably regulated by the act in question and so was subject to the regulation.

We respectfully submit that the judgment of our New Jersey Court of Errors and Appeals was correct and should be affirmed.

Respectfully submitted,

SAMUEL KAUFMAN,
Counsel for Appellee.